

12-16-2013

State v. Deltoro-Cuevas Respondent's Brief Dckt. 40694

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Deltoro-Cuevas Respondent's Brief Dckt. 40694" (2013). *Not Reported*. 1282.
https://digitalcommons.law.uidaho.edu/not_reported/1282

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MANUEL S. DELTORO-CUEVAS,

Defendant-Appellant.

No. 40694

Cassia Co. Case No.
CR-2009-5906

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA

HONORABLE MICHAEL R. CRABTREE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

SHAWN F. WILKERSON
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

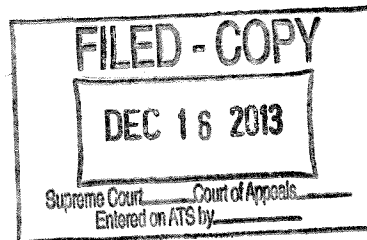


TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE | 1 |
| Nature Of The Case | 1 |
| Statement Of Facts And Course Of Proceedings..... | 1 |
| ISSUES | 3 |
| ARGUMENT | 4 |
| I. Deltoro-Cuevas Has Failed To Show That The Idaho Supreme Court Violated His Constitutional Rights By Partially Denying His Motion To Augment The Appellate Record..... | 4 |
| A. Introduction | 4 |
| B. Standard Of Review..... | 4 |
| C. Deltoro-Cuevas Is Not Constitutionally Entitled To The Requested Transcripts | 5 |
| II. Deltoro-Cuevas has Failed To Show The District Court Abused Its Sentencing Discretion | 8 |
| A. Introduction | 8 |
| B. Standard Of Review..... | 8 |
| C. The Court Did Not Abuse Its Discretion By Failing To <i>Sua Sponte</i> Reduce Deltoro-Cuevas's Sentence Even Further Upon Revoking Probation | 9 |
| CONCLUSION | 11 |
| CERTIFICATE OF SERVICE..... | 12 |

TABLE OF AUTHORITIES

| <u>CASES</u> | <u>PAGE</u> |
|---|-------------|
| <u>Mayer v. City of Chicago</u> , 404 U.S. 189 (1971)..... | 5 |
| <u>State v. Beckett</u> , 122 Idaho 324, 834 P.2d 326 (Ct. App. 1992) | 9 |
| <u>State v. Bromgard</u> , 139 Idaho 375, 79 P.3d 734 (Ct. App. 2003)..... | 4 |
| <u>State v. Brunet</u> , 2013 WL 6001894 (2013)..... | 5, 7 |
| <u>State v. Hanington</u> , 148 Idaho 26, 218 P.3d 5 (Ct. App. 2009) | 9 |
| <u>State v. Marks</u> , 116 Idaho 976, 783 P.2d 315 (Ct. App. 1989)..... | 9 |
| <u>State v. Moore</u> , 131 Idaho 814, 965 P.2d 174 (1998) | 8 |
| <u>State v. Morgan</u> , 153 Idaho 618, 288 P.3d 835 (Ct. App. 2012) | 4 |
| <u>State v. Pierce</u> , 150 Idaho 1, 244 P.3d 145 (2010) | 6 |
| <u>State v. Smith</u> , 135 Idaho 712, 23 P.3d 786 (Ct. App. 2001) | 4 |
| <u>State v. Stover</u> , 140 Idaho 927, 104 P.3d 969 (2005)..... | 9 |
| <u>State v. Wersland</u> , 125 Idaho 499, 873 P.2d 144 (1994) | 8 |
| <u>State v. Wolfe</u> , 99 Idaho 382, 582, P.2d 728 (1978) | 9 |

STATEMENT OF THE CASE

Nature Of The Case

Manuel S. Deltoro-Cuevas appeals from the sentence imposed upon the district court's revocation of his probation. He also challenges the Idaho Supreme Court's order denying his motion to augment the appellate record.

Statement Of Facts And Course Of Proceedings

In August 2009, Sgt. Robert Taylor of the Cassia County Sherriff's Department responded to a report of an erratic driver who had pulled into a gas station. (PSI, p.2.) Sgt. Taylor observed the vehicle leave the gas station parking lot, make improper turns, and spin its tires. (Id.) After Sgt. Taylor attempted to effectuate a traffic stop, the driver drove into the oncoming lane of traffic to pass another vehicle. (Id.) The driver than made several turns before pulling into a residential driveway. (Id.) Eventually, Sgt. Taylor arrested the driver, whom he identified as Manuel S. Deltoro-Cuevas. (Id.) Deltoro-Cuevas' two daughters, aged two and four, were sitting unrestrained in the back seat. (Id.) A breathalyzer test revealed Deltoro-Cuevas' BAC to be .289. (Id.)

The state charged Deltoro-Cuevas with felony eluding, misdemeanor driving under the influence (excessive), failure to purchase a driver's license, and two counts of felony injury to child. (R., pp.37-40.) Pursuant to plea agreement, Deltoro-Cuevas pled guilty to one count of felony injury to child, and misdemeanor driving under the influence (excessive). (R., pp.66-68.) The district court imposed a unified 10-year sentence with three years fixed, but suspended the sentence and retained jurisdiction. (R., pp.77-80.) After Deltoro-

Cuevas performed fairly well during the period of retained jurisdiction, the district court suspended Deltoro-Cuevas' originally-imposed sentence and placed him on probation for 10 years. (R., pp.85-91; 5/25/10 APSI.)

Less than two months later, the state filed a report of probation violation. (R., pp.92-94.) The state alleged that Deltoro-Cuevas failed to check in with the probation office within 48 hours of being sentenced, and that he subsequently left the state. (Id.) More than two years later, after he was arrested, Deltoro-Cuevas was arraigned on the probation violation. (R., pp.95-98). Deltoro-Cuevas admitted violating his probation. (11/27/12 Tr., p.3, L.21 – p.6, L.13.) The district court revoked Deltoro-Cuevas' probation, executed the previously imposed 10-year unified sentence, but reduced Deltoro-Cuevas' fixed period of confinement from three years to one year, with credit for 280 days served. (R., pp.105-108.) Delotro-Cuevas timely appealed. (R., pp.109-112.)

After the appellate record was settled, Deltoro-Cuevas moved to suspend the briefing schedule and to augment the record with as-yet unprepared transcripts of the original change of plea hearing, the original sentencing hearing, the rider review hearing, and the probation violation admit/deny hearing. (5/24/13 Motion.) The Idaho Supreme Court granted Deltoro-Cuevas' motion as to the probation violation admit/deny hearing transcript, but denied it as to each of the other requested transcripts. (6/17/13 Order.)

ISSUES

Deltoro-Cuevas states the issues on appeal as:

1. Did the Idaho Supreme Court deny Mr. Deltoro-Cuevas due process and equal protection when it denied his Motion to Augment with transcripts necessary for review of the issues on appeal?
2. Did the district court abuse its discretion when it failed to further reduce Mr. Deltoro-Cuevas' sentence *sua sponte* upon revoking probation?

(Appellant's Brief, p.3.)

The state rephrases the issues on appeal as:

1. Has Deltoro-Cuevas failed to show that the Idaho Supreme Court violated his constitutional rights by partially denying his motion to augment the appellate record?
2. Has Deltoro-Cuevas failed to show that the district court abused its sentencing discretion?

ARGUMENT

I.

Deltoro-Cuevas Has Failed To Show That The Idaho Supreme Court Violated His Constitutional Rights By Partially Denying His Motion To Augment The Appellate Record

A. Introduction

Deltoro-Cuevas contends that by denying his motion to augment the appellate record with as-yet-unprepared transcripts of various hearings, the Idaho Supreme Court violated his constitutional rights to due process and equal protection and has denied him effective assistance of counsel on appeal. (Appellant's brief, pp.4-19.) Deltoro-Cuevas has failed to establish a violation of his constitutional rights.¹

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Bromgard, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); State v. Smith, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001).

¹ Additionally, should this case be assigned to the Idaho Court of Appeals, that Court lacks the authority to review the Idaho Supreme Court's decision to deny Deltoro-Cuevas' motion. State v. Morgan, 153 Idaho 618, 620, 288 P.3d 835 (Ct. App. 2012). In Morgan, the Idaho Court of Appeals "disclaim[ed] any authority to review, and, in effect, reverse an Idaho Supreme Court decision made on a motion made prior to assignment of the case to [the Idaho Court of Appeals] on the ground that the Supreme Court decision was contrary to the state or federal constitutions or other law." Id. Such an undertaking," the Court explained, "would be tantamount to the Court of Appeals entertaining an 'appeal' from an Idaho Supreme Court decision and is plainly beyond the purview of this Court." Id.

C. Deltoro-Cuevas Is Not Constitutionally Entitled To The Requested Transcripts

Deltoro-Cuevas argues that he is entitled to transcripts of his original change of plea hearing, his original sentencing hearing, and his rider review hearing, because, he claims, the failure to provide them is a violation of his constitutional rights to due process, equal protection, and the effective assistance of appellate counsel. (Appellant's Brief, pp.4-19.) The Idaho Supreme Court recently rejected similar arguments in State v. Brunet, 2013 WL 6001894 (2013).²

In Brunet, the Court stated: "When an indigent defendant requests that transcripts be created and incorporated into a record on appeal, the grounds of the appeal must make out a colorable need for the additional transcripts." Brunet at 3 (citing Mayer v. City of Chicago, 404 U.S. 189, 195 (1971)). "[C]olorable need is a matter of law determined by the court based upon the facts exhibited." Id. In order to show a colorable need, an appellant must show "the requested transcripts contained specific information relevant to [the] appeal." Id. "[H]ypothesiz[ing] that the lack of . . . transcripts could prevent [the appellant] from determining whether there were additional issues to raise, or whether there was factual information contained in the transcripts that might relate to his arguments" does not demonstrate a "colorable need." In other words, an appellant is not entitled to transcripts in order to "search the transcripts for a

² Deltoro-Cuevas did not have the benefit of the Court's opinion in Brunet when he wrote his brief.

reason to request and incorporate the transcripts in the first place.” Id. Such an endeavor is a “‘fishing expedition’ at taxpayer expense” – an exercise the constitution does not endorse. In short, “[m]ere speculation or hope that something exists does not amount to the appearance or semblance of specific information necessary to establish a colorable need.” Id.

Deltoro-Cuevas contends that transcripts from his original change of plea hearing, original sentencing hearing, and his rider review hearing are relevant, regardless of whether they have been prepared or not, because “a district court is not limited to considering only that information offered at the hearing from which the appeal was filed” and that “the applicable standard of review requires an independent and comprehensive inquiry into the events which occurred prior to, as well as the events which occurred during, the probation revocation proceedings.” (Appellant’s Brief, pp.12, 14.) It does not follow however, that an appellant who appeals a post-judgment revocation of probation is constitutionally entitled to a transcript of every hearing conducted throughout the entirety of a criminal case.

Although the appellate court’s review of a sentence is independent, the review is limited, as noted in Brunet, to the “entire record available to the trial court at sentencing.” 2013 WL 6001894 at 4 (citing State v. Pierce, 150 Idaho 1, 5, 244 P.3d 145, 149 (2010)). As in Brunet, the record in this case contains the relevant sentencing materials including the original presentence report and substance abuse evaluation. (See PSI, including attachments.) The record also includes minutes from each of the hearings from which Deltoro-Cuevas has

requested a transcript, as well as minutes from additional hearings. (R., pp.20-21, 41, 43-44, 71-72, 84, 97-98, 100, 102, 104.) “Therefore, the entire record available to the trial court at sentencing is contained within the record on appeal.” Brunet at 4. As such, Deltoro-Cuevas “has failed to demonstrate that he was denied due process or equal protection by this Court’s refusal to order the creation of transcripts at taxpayer expense in order to augment the record on appeal.” Id.

On appeal, despite having access to the minutes from each of the hearings from which he has requested transcripts, Deltoto-Cuevas has not even attempted to speculate as to why, specifically, these transcripts are relevant to his arguments on appeal, much less demonstrate a colorable need for the requested transcripts. As such, Deltoro-Cuevas’ motion to augment the record with these transcripts constitutes an impermissible “fishing expedition.” See Brunet at 3.

Deltoro-Cuevas next argues that “effective counsel cannot be given in the absence of access to the relevant transcripts.” (Appellant’s Brief, p.18.) This argument also fails. Addressing the claim that “refusal to order the creation of the requested transcripts for incorporation into the record” results in the “prospective[]” denial of the effective assistance of counsel, the Court in Brunet concluded Brunet “failed to demonstrate how his counsel’s performance fell below an objective standard of reasonableness without the requested transcripts,” noting “the entire record available to the trial court at sentencing is contained within the record on appeal.” Brunet at 5. The same is true in this

case. “This record meets [Deltoro-Cuevas’s] right to a record sufficient to afford adequate and effective appellate review.” Id. As such, Deltoro-Cuevas has failed to show a Sixth Amendment violation based on the partial denial of his motion to augment.

Because Deltoro-Cuevas failed to show a “colorable need” for any of the transcripts he was denied, assuming this Court addresses his claims that the denial of his motion to augment with those transcripts violated his constitutional rights, his claims fail.

II.

Deltoro-Cuevas has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

Deltoro-Cuevas contends the district court abused its discretion by failing to *sua sponte* further reduce his sentence upon revoking his probation. (Appellant’s Brief, pp.20-23.) A review of the record and the applicable legal standards demonstrates that the district court’s sentence was reasonable in light of the nature of the crime, Deltoro-Cuevas’ prior criminal record, and his unwillingness to comply with the terms of probation.

B. Standard Of Review

“Sentencing decisions are reviewed for an abuse of discretion.” State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The Court Did Not Abuse Its Discretion By Failing To *Sua Sponte* Reduce Deltoro-Cuevas's Sentence Even Further Upon Revoking Probation

Upon revoking a defendant's probation, a court may order the original sentence executed, or may reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision whether to reduce a sentence, and by how much, is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978). The reviewing court "will examine the entire record encompassing events before and after the original judgment," *i.e.*, "facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation." Hanington, 148 Idaho at 29, 218 P.3d at 8.

In this case, the district court reasonably decided to revoke Deltoro-Cuevas' probation. (12/31/12 Tr., p.7, L.17 - p.9, L.18) ("I feel like the willfulness of your conduct in [absconding] was unjustified and unwarranted and demonstrates to me that you're not an appropriate person for probation.".) The court also *sua sponte* elected to reduce Deltoro-Cuevas' sentence by modifying the fixed period of confinement from three years to one year, with credit for 280 days served. (Id.; R., pp.105-108.) Deltoro-Cuevas has failed to show that the district court abused its discretion by declining to reduce his sentence even further.

The nature of Deltoro-Cuevas' crime and his prior criminal history warrant the sentence imposed. Deltoro-Cuevas has at least three prior convictions for driving under the influence, and a prior conviction for felony eluding. (PSI, p.3.) Deltoro-Cuevas' probation was revoked following at least two of these convictions. (Id.) In the present case, a severely-intoxicated (.289 BAC) Deltoro-Cuevas eluded police, drove into the oncoming lane of traffic, all while transporting his two small daughters, whom officers found crying in Deltoro-Cuevas' vehicle after the pursuit. (PSI, p.2.) Given Deltoro-Cuevas' penchant for driving intoxicated and fleeing police officers, it was reasonable for the district court to determine that further reducing Deltoro-Cuevas' sentence would not adequately protect the community, or his children.

In support of his contention that the district court abused its discretion by not further reducing his sentence, Deltoro-Cuevas references mitigating factors such as his family support, strong employment record, and relatively successful

rider performance. (Appellant's brief, pp.20-21.) However, the existence of these mitigating factors likely already contributed to Deltoro-Cuevas' lenient original plea agreement, the opportunity he was given to participate in a rider program and then probation, and the district court's reduction of his sentence upon its revocation of his probation. It does not follow, however, that these factors mandated an even further reduction of Deltoro-Cuevas' sentence.

In light of the seriousness of his crime, significant criminal history, and unwillingness to participate in probation, the district court's decision to not further reduce Deltoro-Cuevas' sentence was entirely reasonable. Deltoro-Cuevas has therefore failed to establish an abuse of discretion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order revoking Deltoro-Cuevas' probation and imposing a modified sentence.

DATED this 16th day of December, 2013.




MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of December, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm